



1 admission to the United States, in violation of 8 U.S.C. § 1326, enhanced by 8 U.S.C.  
2 § 1326(b)(2).

3 The Presentence Report calculated Petitioner as having a Total Offense Level 21 and  
4 a Criminal History Category V. The Court departed two levels pursuant to § 5K2.0 of the  
5 United States Sentencing Guidelines, based on the savings to the government. The Court  
6 imposed a sentence of fifty-seven months.

### 7 Discussion

8 In his motion, Petitioner seeks a reduction of his sentence. He contends that his right  
9 to equal protection is violated by the fact that deportable alien prisoners, unlike their United  
10 States citizen counterparts, are ineligible for a one-year sentence reduction for attending a  
11 drug treatment program during incarceration and for early release to a half-way house.

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13 The Ninth Circuit Court of Appeals rejected Petitioner's argument in *McLean v.*  
14 *Crabtree*, 173 F.3d 1176 (9th Cir. 1999). In that case, the Ninth Circuit found that there was  
15 no equal protection violation and held that "excluding prisoners with detainers from  
16 participating in community-based treatment programs, and consequently from sentence  
17 reduction eligibility, is at least rationally related to the BOP's legitimate interest in  
18 preventing prisoners from fleeing detainers while participating in community treatment  
19 programs." *Id.* at 1186.

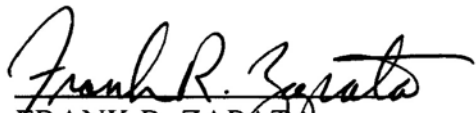
### 21 Conclusion

22 Accordingly,

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24 **IT IS ORDERED** that Petitioner's § 2255 Motion (U.S.D.C. document #35 in  
25 CR-04-254-TUC-FRZ) is **DENIED** and this case (CV-06-187-TUC-FRZ) is **DISMISSED**.

1           **IT IS FURTHER ORDERED** that the Clerk of the Court **SHALL SERVE** a copy  
2 of the Motion and this Order on Respondent and **SHALL SERVE** a copy of this Order on  
3 Petitioner.

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5           DATED this 20th day of April, 2006.

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8           FRANK R. ZAPATA  
9           United States District Judge  
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